CENTRAL INTELLIGENCE AGENCY

14 November 1975

STAT TO: [redacted]

I have drawn up a quick formulation of the major issues growing out of the HSC investigation to date. If the Committee is clear in its collective mind as to what legislative proposals will be put forward, the Review Staff is unaware of what these might be. Our feeling is that the HSC is quite divided. The resolution of their current exercise with the White House should have a strong influence on what they eventually put forward.

Hope this is helpful.

STAT [redacted]
Review Staff

cc Mr Elder

ISSUES RAISED BY THE HOUSE SELECT COMMITTEE

A. Taken in its broadest terms, the HSC investigation has been focused on three issues, the costs, risks and value received from the intelligence production process. HSC consideration of these issues, and the shortcomings they have perceived therein, have led them to their current central concern, which deals with governmental structure shaping the decision making processes, which in turn directly influence the intelligence community.

1. Under costs the following more specific matters have been looked into:

   a. fiscal management (the suspicion of profligacy remains);

   b. covert procurement and proprietaries (the costs imposed by perhaps unnecessary secrecy);

   c. Accommodation procurement (why so many favors to foreigners?);

   d. local procurement (why so much liquor and so many "odd-ball" items?);

   e. costing methods (Out of the Angola briefing came the feeling that by artificially low costing of items, the true costs of covert action operations might be camouflaged.).

2. Under risks the following more specific matters have been looked into:

   a. covert action (some of the HSC committee members appear to feel that CA might well be ruled out of the Agency's charter. Others believe that the covert actions operations they have looked at in some detail -

STAT

STAT [redacted] Even those who favor a continuation of covert action on a highly selective basis, appear to want to modify the decision-making process, to make it less easy to control by non-elected officials.);

b. [redacted] STAT

c. detailees (in this case, the HSC's concern that the Agency's detailees were risks to the integrity of the organizations to which they were assigned has been mitigated by what they have learned and been told. Some lingering negative feelings about the program appear to remain, particularly with regard to the Agency's having one of its officers as Recording Secretary of the [redacted] Other assignments to the White House and NSC have also been looked upon with a jaundiced eye.); STAT

d. contacts with local U.S. police forces (largely a concern about past activities - current suit against the Agency may bring these feelings into a more current focus.);

e. CIA-IRS relationship (here there has been a suspicion of collusion, possible evasion of tax payments, etc., which has been somewhat alleviated by material provided to the committee. An earlier concern about possible hidden profits from our proprietaries has also been alleviated.).

NOTE: The HSC's conception of "risks" is somewhat different from the view held by most Agency officers. While the Agency is largely concerned about security risks, the HSC is focused upon risks to national credibility and national institutions which may result from what they deem to be ill-conceived intelligence operations.

3. Under value received the following more specific matters have been looked into:

   a. intelligence "failures" (by looking at isolated instances such as the Middle-East War of 1973 and the 1974 Cyprus crisis, the HSC has developed a basis for saying that our intelligence production apparatus is not what it should be);

   b. failures in analysis (as the specific incidents mentioned above have been looked at closely, some members of the HSC have come to the overly-pat conclusion that our collection abroad is excellent, and that it is our analysis in Washington which is at fault.);

   c. suppresion of intelligence by policy levels (Testimony by Sam Adams, the Boyatt memorandum, and possible differences between Dr. Kissinger and James Schlesinger over Soviet adherance to SALT have led some members of the HSC to feel that policy makers ignore or, even worse, suppress intelligence or advice which does not "fit" with a pre-determined policy objective.).

B. The HSC's hopes to change the decision-making processes bearing upon the intelligence community appear as yet largely ill-defined. The following concepts have been mentioned and almost certainly will be the subject of discussion in wrap-up hearings before the committee to be held in December:

   1. improved Congressional oversight (HSC members admit the laxity of past Congressional oversight, but probably no more than two or three members of the HSC would seek membership on any permanent oversight committee.);

   2. limiting the powers of the executive (a fundamental and underlying motive of the HSC investigation, which has not yet, to our knowledge, been fleshed out in terms of concrete planning.);

   3. strengthening the 40 Committee (HSC hearings on covert action have caused them to believe that the 40 Committee, if broadened in membership, and given a more central role in decisions affecting covert action, might lead to both fewer and better covert actions.);

4. strengthening the DCI (the HSC impression that certain covert actions have been forced upon the Agency makes them hope that the DCI's ability to say "no" might be enhanced. Opposition within the HSC to the George Bush nomination pivots on this issue, as they feel that a "political" DCI might be too "subservient" to the executive;

5. limiting or refining CIA's charter, with particular regard to covert action and covert contacts with U.S. businesses, media outlets and other governmental organizations (Feeling on this issue is deeply divided within HSC membership. Some would clearly appear to want to limit the Agency to intelligence gathering only. Others are far more permissive in their attitudes. How this broad mix of attitudes will be sorted out (if at all) in terms of concrete proposals, remains to be seen.).

DRAFT

Summary of Various Legislative Proposals of Interest to the Central Intelligence Agency

A. Congressional Review of Executive Agreements

B. Freedom of Information Act Amendments

C. National Security Act Amendments

D. Privacy Act Amendments

E. CIA Oversight by Congress

F. GAO Audits of Intelligence Agencies

G. Financial Disclosure

CONGRESSIONAL APPROVAL OF EXECUTIVE AGREEMENTS

Several bills have been introduced which would subject Executive agreements to congressional review. These include S. 632, introduced by Senator Bentsen; S. 1251, introduced by Senator Glenn, and its companion bill H. R. 5489, introduced by Representative Spellman; and H. R. 4438, introduced by Representative Morgan and by 22 other members of the House International Relations Committee.

Each of these bills proposes similar congressional review procedures. Executive agreements would be transmitted to Congress and would come into force after a 60-day period unless disapproved by both Houses. If the President believes disclosure of an agreement would prejudice national security, the agreement would be transmitted to the Senate Foreign Relations and House International Relations Committees under a "written injunction of secrecy." The committees would thereupon make the secret agreements available for inspection only by members of their respective Houses.

These bills have been spawned by the belief that the Senate's treaty-making authority, which it shares with the President, has been bypassed by the device of the Executive agreement. The practical and constitutional impact of these bills hinges on the scope of their definition of Executive agreement.

(a) S. 632 defines Executive agreement as "any bilateral or multilateral international agreement or commitment, other than a treaty, which is binding upon the United States, and which is made by the President or any officer, employee, or representative of the executive branch ... "

(b) S. 1251 defines the term as "any bilateral or multilateral international agreement or understanding, formal or informal, written or verbal, other than a treaty, which involves, or the intent is to leave the impression of, a commitment of manpower, funds, information, or other resources of the United States, and which is made by the President or any officer, employee, or representative of the executive branch ... "

(c) H. R. 4438 defines Executive agreement as "any bilateral or multilateral international agreement or commitment, regardless of its designation, other than a treaty, and including an agency-to-agency agreement, which is made by the President or any officer, employee, or representative of the executive branch ... " Only Executive agreements "concerning the establishment, renewal, continuance, or revision of a national commitment" are required to be reported to Congress under this bill. However, the term "national commitment" is defined

as "any agreement or promise, (1) regarding the introduction, basing, or deployment of the Armed Forces of the United States on foreign territory; or (2) regarding the provision to a foreign country, government, or people, any military training or equipment including component parts and technology, any nuclear technology, or any financial or material resources."

Because these definitions of Executive agreement are so expansive, and the "secrecy" provisions of these bills are so palpably inadequate, their enactment would severely cripple the national intelligence effort both with respect to intelligence-gathering and nonintelligence-gathering activities.

Cooperation with foreign counterpart services is absolutely essential to successful intelligence collection. Formal or informal, such relationships usually involve a quid pro quo and may be on regular or ad hoc basis. Because in many cases foreign services would cease cooperation if there were even a risk of disclosure or acknowledgment of their relationship, the bills reviewed above would destroy much essential liaison by subjecting it to plenary congressional review and approval.

Sometimes formal or informal arrangements with foreign governments are necessary to facilitate foreign intelligence collection. Such an arrangement may be necessary to establish an intelligence-gathering facility in a foreign country, for example. Proposed legislation would effectively preclude any intelligence collection where such collection is predicated on bilateral or multilateral arrangements, because actual disclosure of these agreements would nullify the collection effort itself and, in many cases, the mere risk of public disclosure or acknowledgment would inhibit foreign governments from entering into such arrangements.

Finally, agreements with other countries may be necessary in conducting nonintelligence-gathering operations. In these cases, the legislation reviewed above would supersede and expand the reporting provisions of section 32 of the Foreign Assistance Act of 1974 by requiring full congressional review and approval of such action. This requirement would preclude undertaking such operations.

These bills also raise constitutional issues. The Constitution requires Senate approval of treaties, and insofar as an Executive agreement finds its source solely in the President's treaty-negotiating authority, the Senate may have a valid basis for participating in its formulation. However, some Executive agreements may be rooted in other sources of Presidential power, such as the President's prerogatives as Commander-in-Chief or his special powers in the foreign relations field. These powers are not shared with the Congress. Agreements entered into in the exercise of these powers cannot be characterized as an "evasion" of the Senate's treaty-making powers, and the President may not constitutionally be compelled to submit them for congressional approval.

FREEDOM OF INFORMATION ACT AMENDMENTS

S. 1210, a bill to amend the Freedom of Information Act (5 U.S.C. 552), is pending before the Subcommittee on Administrative Practice and Procedure. Senator Kennedy introduced the bill and held hearings on it on April 28 and 29, and June 12. The bill implicitly recognizes the right of a federal employee to disclose to any person information which is obtainable under the Freedom of Information Act (FOIA), and prohibits an agency from taking any adverse personnel action against an employee who so discloses. The bill does not make clear whether an employee must seek authorization from designated agency FOIA officials before releasing a document, or whether he can release a document predicated on his own belief that the document is not exempt from release.

The recent Freedom of Information Act amendments (P. L. 93-502) have dramatically increased the workload of federal agencies in dealing with these requests. CIA, for example, has found it necessary to assign over fifty of its employees to work full time handling FOIA requests. Numerous other Agency employees are also involved in processing these requests on less than a full-time basis. The one saving grace of the present law is that it permits agencies to centralize their handling of these requests, so that designated agency representatives determine what can be released, and what can and must be withheld. S. 1210, if interpreted to allow employees to reach their own decision on what can be released, would destroy this structure, and thereby destroy agency attempts to deal with the Freedom of Information Act in a methodical, organized manner.

If it is the intent of the bill to require an employee to obtain official screening and approval before releasing a document, such fact needs to be clearly stated in the bill. This would alleviate the major potential problem with the bill, but others would remain. These include:

1. Section 102(c) of the National Security Act of 1947 (50 U.S.C. 403) grants the Director of Central Intelligence the power to terminate the employment of any CIA employee when in his complete discretion, such termination would be necessary or advisable in the interests of the United States. The restriction in S. 1210 on adverse personnel actions is inconsistent with the statutory authority of the DCI.

2. The bill provides a perfect tool for disgruntled agency employees to work against their agency, rather than working from within to correct deficiencies as they see them. Also, under the guise of protecting employees from retributive agency action, the bill could subject employees to new pressures and impose very serious responsibilities on individuals who are without corresponding expertise. Investigative reporters and other outsiders could badger

employees to obtain and release documents. If employees may release documents when they personally believe them to be releasable under the FOIA, the bill would subject employees to substantial risks. If the employee releases materials which should have been withheld under FOIA, no protection is afforded employees. If the release amounts to a security violation, the consequences of the release could well be quite serious for the U. S. Government, and for the employee.

3. Section (f)(1)(B) establishes the right of employees to make any information whatsoever available to Members of Congress, even information protected from public disclosure under exceptions to the Freedom of Information Act. This section would frustrate and confuse agency attempts to report to Congress through orderly channels. It would also contradict congressionally-established procedures of restricting access to sensitive intelligence information to the intelligence oversight subcommittees. Finally, it could create a major complication for the Director in discharging the responsibility placed upon him by the Congress to protect Intelligence Sources and Methods from unauthorized disclosure (50 U.S.C. 403).

4. Proposed section (f)(4) of the bill creates a presumption that any adverse personnel action taken against an employee within one year after that employee released information under the FOIA is predicated on the release of the information. This section would readily lead to abuses, by encouraging employees who were in danger of adverse personnel action to release material in order to gain unwarranted advantage of the presumption.

NATIONAL SECURITY AND CIA ACT AMENDMENTS

Key Bills

During the 93rd Congress, Senator Stennis, Senator Proxmire, Representative Nedzi, and others introduced proposals to amend the CIA section of the National Security Act of 1947. Senator Proxmire (S. 244) and Representatives McCloskey (H.R. 628), Dellums (H.R. 343), and Findley (H.R. 5873) have introduced National Security Act amendments in the 94th Congress. During the 93rd Congress, the Senate approved an amendment to the Fiscal 1975 Defense Authorization bill (H.R. 14592), which incorporated the Proxmire language, but the amendment was rejected in conference on the point of germaneness. Representative Nedzi held hearings on his bill in July 1974, but his Armed Services subcommittee did not report a bill. No action by the 94th Congress is expected until the House and Senate Select Committees currently investigating the Agency make their recommendations.

Various Provisions

Following are the specific proposed amendments to the Act which appear in one or more of the bills introduced in the 93rd or 94th Congress.

1. Insert the word "foreign" before the word "intelligence" in the Act, wherever it refers to the activities authorized to be undertaken by the Central Intelligence Agency (Stennis, Proxmire, Nedzi, Bennett bills).

2. Reiterate existing prohibitions against CIA assuming any police or law-enforcement powers, or internal-security functions (Stennis, Proxmire, Nedzi bills).

3. Enumerate permissable activities for the CIA in the United States:

   (a) Protect CIA installations;

   (b) Conduct personnel investigations of employees and applicants, and others with access to CIA information;

   (c) Provide information resulting from foreign intelligence activities to other appropriate agencies and departments;

   (d) Carry on within the United States activities necessary to support its foreign intelligence responsibilities.

The Stennis, Proxmire, and Nedzi bills include (a), (b), and (c), but only the Nedzi and Stennis bills include item (d), which is considered to be an essential proviso.

4. Require the CIA to report to Congress on all activities undertaken pursuant to section 102(d)(5) of the National Security Act (this proposal was somewhat overtaken by enactment of section 32 of P. L. 93-559 requiring Presidential finding and covert action reporting to six committees of the Congress--oversight committees and foreign affairs committees of both Houses) (Nedzi, Proxmire, and Stennis).

5. Require the Director to develop plans, policies, and regulations in support of the present statutory requirement to protect Intelligence Sources and Methods from unauthorized disclosure, and report to the Attorney General for appropriate action any violation of such plans, policies, or regulations. This requirement shall not be construed to authorize CIA to engage in expressly prohibited domestic activity (no police, subpoena, or law-enforcement powers, or internal-security functions) (Nedzi and Stennis).

6. Prohibit CIA from participating, directly or indirectly, in any illegal activity within the United States (Proxmire and Dellums).

7. Prohibit transactions between the Agency and former employees, except for purely official matters (Nedzi).

8. Prohibit covert action (McCloskey and Dellums).

9. Limit the DCI to eight years in office (Dellums).

10. Provide that the positions of the Director and Deputy Director may not be simultaneously occupied by individuals who were employed by CIA during the five years prior to their appointment (Dellums).

11. Require advance approval of the four oversight committees before assistance of any kind is provided to a federal, state, or local governmental agency (Dellums).

12. Require the Agency to prepare special reports on foreign situations at the request of specified committees of Congress, and provide for the availability of these reports to all members of Congress (Findley).

13. Establish a criminal penalty for a violation of the prohibition on the Agency assuming police, subpoena, law-enforcement powers, or internal-security functions (Findley).

14. Expressly subject Agency employees testifying before the Congress to existing United States Code provisions regarding perjury and witness' privileges (Findley).

15. Add a statutory directive that the Agency collect intelligence (Bennett).

16. Require the Agency to notify American citizens when it is collecting intelligence from them within the United States or its possessions, except pursuant to published Executive Order (Bennett).

17. Limit the authority of the Director to protect Intelligence Sources and Methods from unauthorized disclosure within the United States to

(a) lawful means used to prevent disclosure by present or former employees, agents, sources, or persons or employees of persons or organizations who contract with the Agency or are affiliated with it; and

(b) provide guidance and technological assistance to other Federal departments and agencies performing intelligence functions (Bennett).

PRIVACY

The 93rd Congress enacted landmark privacy legislation, (P.L. 93-579), which will become effective in September 1975. In drafting the Privacy Act, Congress recognized that "certain areas of Federal records are of such a highly sensitive nature that they must be exempted" (House Report 93-1416). Accordingly, Congress exempted systems of records "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" [subsection (k)(1)], and Central Intelligence Agency records [subsection (j)(1)] from portions of the Act. Sections of the Act which do apply to CIA prohibit the dissemination of records except for specific enumerated purposes, require the Agency to maintain a listing of each disclosure of a record for at least five years, and publish annually in the Federal Register a general description of our systems of records concerning American citizens or permanent resident aliens. The Agency is exempt from the section granting citizens or permanent resident aliens access to records held on them by federal agencies.

Proposals by Representative Abzug (H.R. 169, 2635) would strike the exemption for CIA records. Ms. Abzug, who led an unsuccessful floor fight during the 93rd Congress to strike the committee-sponsored CIA exemption, is now Chairperson of the House Government Operations Subcommittee on Government Information and Individual Rights, which has jurisdiction over the Privacy and Freedom of Information Acts. She held well-publicized hearings on this subject on March 5 and June 25, at which the Director testified.

Although some CIA information can be protected by the section (k)(1) exemption for national defense or foreign policy information, this exemption would not fully protect Intelligence Sources and Methods information contained in the Agency's system of records. An intelligence document can reveal sources and methods and warrant protection even though the substantive information conveyed does not jeopardize the national defense or foreign policy. An example may help explain this. A and B, U. S. citizens, attend a scientific conference abroad of foreign intelligence interest to the United States. A voluntarily provides the Agency confidential information on the conference and includes information concerning B, or a foreign asset reports on the conference and includes information on A and B. Disclosure of the information on either A or B could reveal A or the foreign asset as the source of the information.

An exemption in the Act for foreign intelligence sources and methods, rather than the present exemption for CIA records is satisfactory. This point has been made during the hearings, but Ms. Abzug seems determined to push for the elimination of the CIA exemption, without a substitute sources and methods exemption.

CIA OVERSIGHT PROPOSALS

The longstanding congressional oversight procedure of reporting on Agency operations only to the Armed Services and Appropriations Committees of both houses was significantly altered by the Foreign Assistance Act of 1974, which requires reporting on covert action to the foreign affairs committees of both Houses. This means six committees now receive reports on covert operations. Other, more far-reaching proposals have been introduced in the 94th Congress. The Senate Subcommittee on Intergovernmental Relations of the Committee on Government Operations held hearings on 9 and 10 December 1974 regarding CIA oversight. Senator Muskie, Chairman of this Subcommittee, originally announced additional hearings for early 1975, but is deferring to the Senate Select Committee.

Following are sketches of proposals to alter the permanent CIA oversight mechanism. All House bills on oversight have been referred to the Rules Committee. Jurisdiction of the Senate bills is split between the Armed Services, Government Operations, and Rules Committees.

1. Joint Committee on Intelligence Oversight (S. 317, H.R. 463)

Senators Baker and Weicker and twenty-five co-sponsors introduced the Senate proposal in the 93rd Congress and again in January. Senators Baker and Weicker spoke in favor of their bill during the Muskie hearings last December. Representatives Frenzel and Steelman introduced the companion House bill. The Joint Committee on Intelligence Oversight would have fourteen members, appointed by the leadership, and the chairmanship would alternate between the House and Senate members for each Congress. The legislative jurisdiction of the Committee would extend to CIA, FBI, Secret Service, DIA, NSA, and all other governmental activities pertaining to intelligence gathering or surveillance of persons. Heads of all named departments would be required to keep the Committee fully and currently informed of all activities.

2. Joint Committee on National Security (S. 99, H.R. 54)

This bill was introduced in the 93rd and 94th Congresses by Senator Humphrey. Representative Zablocki is the House sponsor. Dr. Ray Cline, formerly a CIA official and later the Director of the Bureau of Intelligence and Research, Department of State, spoke in favor of this proposal during the Muskie hearings.

The Joint Committee on National Security would consist of the Speaker, Majority and Minority members of each house, the chairman and ranking Minority members of the Armed Services, Appropriations, foreign affairs, Joint Atomic Energy Committees, three other Representatives, and three other Senators.

Proposed functions of the Committee are to study foreign, domestic, and military national security policies, study the National Security Council, and study government classification practices, and report periodically to each House on the Committee's findings. This bill would apparently not change any present jurisdiction (e.g., the Armed Services Committees would retain legislative jurisdiction over CIA); it would merely supplement it.

3. Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaging in Surveillance (S. 189)

Senators Nelson, Jackson, and Muskie introduced this proposal. Senator Nelson introduced a similar proposal last Congress, and supported it during the Muskie hearings. This committee would be composed of eight Senators and eight Representatives, with an equal party split. The Committee would be empowered to study the need to reorganize U. S. agencies engaged in investigation or surveillance of individuals (citizenship not specified), the extent, methods, authority, and need for such investigation or surveillance, and the state-federal relationship in this area. The Joint Committee would not have jurisdiction to examine activities conducted outside the United States, but may recommend means for Congress to oversee such extraterritorial activity.

4. Joint Committee on Information and Intelligence (S.Con.Res. 4)

Senator Hathaway is the sponsor of this proposal. It would create a fourteen-member joint committee to study the activities of each information and intelligence agency and their interralationships.

5. Several other House bills or resolutions would create joint committees to assume CIA oversight and would either have members appointed by the leadership or drawn from specified committees (such as Armed Services, Appropriations, Foreign Relations, International Relations, and Government Operations). Among this group are H.R. 261, H.Con.Res. 18, H.R. 2232. H.Res. 51 would create a new standing committee of the House entitled the Committee on the Central Intelligence Agency.

6. Mr. Dellums has reintroduced the "Central Intelligence Agency Disclosure Act," H.R. 1267, amending certain statutory authorities to modify Agency exemptions in the area of reporting to Congress. The bill would impose a positive duty on the Agency to report to congressional committees and subcommittees upon request sensitive details on prospective activities, contracts, and covert funding, information already available to appropriate oversight committees under current procedures. The Agency would also be required upon request to provide any substantive and operational information to any congressional committee or subcommittee relating to any matter within its jurisdiction. These provisions would proliferate sensitive information on Agency operations throughout the Congress and fragment oversight responsibilities.

GENERAL ACCOUNTING OFFICE AUDITS

Senator Proxmire has introduced S. 653, amending the Budget and Accounting Act of 1921. This bill would authorize the Comptroller General to conduct an audit of the accounts and operations of an intelligence agency, when requested by a congressional committee with legislative jurisdiction of that agency. The legislation states this audit shall be conducted notwithstanding the provision of section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403).

Section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. 403) charges the Director of Central Intelligence with protecting Intelligence Sources and Methods from unauthorized disclosure. One of the key statutory tools assisting the Director in this pursuit is section 8, which would be severely eroded by enactment of S. 653. Section 8(b) states:

> "(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

Officials of GAO have expressed their support for this unique authority.

GAO began auditing CIA's vouchered accounts in 1949, and began an expanded audit in 1959. However, the Agency, with approval of the congressional oversight committees, did not permit GAO to inspect our most sensitive records. As a result of GAO's insistence that it did "not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress," the audit was terminated in 1962. CIA responded by establishing additional internal audit and review procedures, which observe the same audit principles and standards as the GAO.

The Agency believes section 8(b) must not be encumbered in any way. It is extremely important to the Director's ability to protect Intelligence Sources and Methods from unauthorized disclosure. The Agency has always felt that an arrangement could be reached which would comport with GAO audit requirements while not jeopardizing Intelligence Sources and Methods. However, we oppose any legislation which would authorize any additional access to our most sensitive records.

DOD

FINANCIAL DISCLOSURE

Bills introduced in both Houses would require federal employees receiving specified salaries (e.g., above $25,000 per year) to file financial statements with the Comptroller General. One bill would only require a statement of assets and liabilities, while most of the bills require a listing of:

(a) amount and source of each item of income and gift over $100;

(b) value of each asset held by him solely or jointly with his wife;

(c) amount of each liability owed;

(d) all dealings in securities or commodities;

(e) all purchases and sales of real property.

The public is to be granted access to the statements. Criminal penalties are prescribed for willfully filing false statements or failing to file a statement.

These proposals conflict with section 6 of the CIA Act of 1949, which states that "the Agency shall be exempted from the provisions of ... any other law which require(s) the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." They would also raise very serious security problems, and are contrary to the spirit of privacy so recently endorsed by the Congress.

1. Insert the word "foreign" before the word "intelligence" in the Act, wherever it refers to the activities authorized to be undertaken by the Central Intelligence Agency. (Stennis, Proxmire, Nedzi, Bennett)

I fully support the identical provisions which insert the word "foreign" immediately before the word "intelligence" in section 102(d) of the 1947 Act, thus clearly expressing the mission of CIA as relating only to foreign intelligence. While I believe the word "intelligence" in the original Act was generally understood to refer only to foreign intelligence, the suggested language will make this limitation even clearer to Agency employees, other Government officials, and to the public.

2 & 3. Reiterate existing prohibitions against CIA assuming any police or law-enforcement powers, or internal-security functions. Enumerate permissible activities for the CIA in the United States.

Both S. 2597 and S. 3767 add a new section 102 (g)(1) to the Act which reiterates the existing prohibition against any police, law-enforcement, or internal-security functions, while setting forth permissable areas of domestic activity for the Agency. While both bills explicitly recognize the necessity that the Agency protect its installations, conduct personnel investigations, and provide information to other agencies, only S. 2597 recognized that the Agency must conduct activities within the United States in support of its foreign intelligence responsibilities. This latter proviso in S. 2597 is deemed essential so that there is no question that the Agency is permitted to conduct certain necessary activities in the United States. Of course, such activities could not contravene the proscriptions in the Act against internal security functions, but would be solely in support of our foreign intelligence mission, such as: (a) interviewing American citizens who are willing, voluntarily and without pay, to share foreign intelligence information in their possession with their Government; (b) collecting foreign intelligence from foreigners in the United States; (c) establishing support structures necessary to foreign intelligence operations abroad; and (d) providing technical assistance to the Federal Bureau of Investigation for its counterintelligence operations against foreigners.

4. Require the CIA to report to Congress on all activities undertaken pursuant to section 102(d)(5) of the National Security Act (this proposal was somewhat overtaken by enactment of section 32 of P.L. 93-559 requring Presidential finding and covert action reporting to six committees of the Congress--oversight committees and foreign affairs committees of both Houses). (Nedzi, Proxmire, and Stennis)

I am pleased to accept the identical provisions concerning section 102 (d)(5) of the Act, which converts to a statutory requirement the long-standing practice of complete congressional oversight of our activities. Pursuant to current congressional procedures, the Agency reports fully on its activities to the oversight subcommittees of the House and Senate Armed Services and Appropriations Committees. This system has worked well in protecting the numerous highly sensitive matters reported to these Committees over the years. I am confident that any future congressional procedures which may be established will be as effective as the existing ones in meeting the dual objectives of complete security and maximum oversight.

5. Require the Director to develop plans, policies, and regulations in support of the present statutory requirement to protect Intelligence Sources and Methods from unauthorized disclosure, and report to the Attorney General for appropriate action any violation of such plans, policies, or regulations. This requirement shall not be construed to authorize CIA to engage in expressly prohibited domestic activity (no police, subpoena, or law-enforcement powers, or internal-security functions).

Section (4) of S. 2597 reenforces the charge in the 1947 Act that the Director of Central Intelligence shall be responsible for protecting Intelligence Sources and Methods from unauthorized disclosure by requiring the Director to develop plans, policies, and regulations in the implementation of this responsibility. Any information indicating a violation of the Director's plans, policies, and regulations would be reported to the Attorney General for appropriate action. Section (4) would not create additional penalties for unauthorized disclosure.

Provision for CIA to undertake certain activities pursuant to section 102(d)(5) of the National Security Act (this proposal was somewhat overtaken by enactment of section 32 of P.L. 93-559 requring Presidential finding and covert action reporting to six committees of the Congress--oversight committees and foreign affairs committees of both Houses). (Nedzi, Proxmire, and Stennis)

I am pleased to accept the identical provisions concerning section 102 (d)(5) of the Act, which converts to a statutory requirement the long-standing practice of complete congressional oversight of our activities. Pursuant to current congressional procedures, the Agency reports fully on its activities to the oversight subcommittees of the House and Senate Armed Services and Appropriations Committees. This system has worked well in protecting the numerous highly sensitive matters reported to these Committees over the years. I am confident that any future congressional procedures which may be established will be as effective as the existing ones in meeting the dual objectives of complete security and maximum oversight.

5. Require the Director to develop plans, policies, and regulations in support of the present statutory requirement to protect Intelligence Sources and Methods from unauthorized disclosure, and report to the Attorney General for appropriate action any violation of such plans, policies, or regulations. This requirement shall not be construed to authorize CIA to engage in expressly prohibited domestic activity (no police, subpoena, or law-enforcement powers, or internal-security functions).

Section (4) of S. 2597 reenforces the charge in the 1947 Act that the Director of Central Intelligence shall be responsible for protecting Intelligence Sources and Methods from unauthorized disclosure by requiring the Director to develop plans, policies, and regulations in the implementation of this responsibility. Any information indicating a violation of the Director's plans, policies, and regulations would be reported to the Attorney General for appropriate action. Section (4) would not create additional penalties for unauthorized disclosure.

As you know, Mr. Chairman, I am of the opinion that more effective deterrents are needed to prevent unauthorized disclosures of Intelligence Sources and Methods. Specific legislation to this end is under active consideration within the Executive Branch. I do, however, support section (4)(g) of S. 2597 as clarifying the existing provision in the 1947 Act concerning the protection of Intelligence Sources and Methods from unauthorized disclosure.

Your interest in a clear statutory delineation of this Agency's functions and authority is appreciated, and I wish to assure you of our clear understanding that this Agency's responsibilities apply only to foreign intelligence and related activities.

6. Prohibit CIA from participating, directly or indirectly, in any illegal activity within the United States. (Proxmire and Dellums)

Finally, proposed section 12(3) states that the Agency shall not "participate, directly or indirectly, in any illegal activity within the United States." I believe this section is inappropriate and unnecessary. All Agency employees are well aware that CIA must operate within the confines of the law.

7. Prohibit transactions between the Agency and former employees, except for purely official matters. (Nedzi)

The bill also adds a new subsection to the Act to prohibit transactions between the Agency and former employees except for purely official matters. I fully subscribe to the purpose of this provision, to assure that former employees not take advantage of their prior associations to utilize the Agency's assistance or resources, or to have an undue influence on the Agency's activities. This is particularly directed at the possible use of the Agency's assets for "nonofficial" assistance outside the Agency's charter. I would like to say that such a provision is not necessary, but again I must admit that errors have been made. While I do not believe there were any instances of major import, I accept the desirability of making the limitations on the Agency's unique authorities quite clear.

The normal legal proscriptions against improper influence on Federal employees apply, of course, to the Agency. In addition, a regulation has been developed within the Agency, which is brought to the attention of each employee each year, that any CIA employee who believes that he has received instructions which in any way appear inconsistent with the CIA legislative charter will inform the Director immediately. I might point out that in those cases which presented questions concerning the Agency overstepping its bounds, the propriety and dedication to American traditions of our own employees caused them to object to possible Agency activities outside its charter. In my confirmation hearing I stated that I am quite prepared to leave my post if I should receive an order which appeared to be illegal and if my objections were not respected.

Thus, we in the Agency are fully in accord with the purpose of this amendment. At the same time, I confess concern over some possible interpretations of the language of this subsection. I assume that "purely official matters" would include our normal relationships with our retirees or others who left the Agency. I would assume it would also enable us to maintain normal official relationships with individuals who left the Agency to go on to other Governmental activities so long as the "official matters" fall within the scope of CIA's legitimate charter and there is no undue influence involved. I do wonder, however, whether certain activities might be included under this provision as official which neither the Congress nor the Agency would want to countenance, and on the other hand whether the phrase might interfere with a contact with an ex-employee volunteering important information to the Agency.

8. Prohibit covert action. (McCloskey and Dellums)

Abolish Covert Actions

Subsection (8) of section 3 would prohibit CIA from planning or implementing directly or indirectly certain covert actions. Similarly-intended proposals were considered and overwhelmingly rejected by both Houses of the 93rd Congress. The House voted 291-108 on September 24, 1974, against an amendment to the Fiscal 1975 Continuing Appropriations Resolution (H.J. Res. 1131) to deny funds to CIA for the purpose of undermining the government of any foreign country. The Senate rejected, by a vote of 68-17 on October 2, 1974, an attempt to amend the Foreign Assistance Act to abolish all CIA covert actions (amendment number 1922).

These votes clearly illustrate the view of the 93rd Congress that the U.S. Government must maintain a covert action capability. Although the covert actions of this Agency now require only a small part of our total expenditures, I agree with Congress that our Government must keep a covert action capability in order to be prepared for any eventuality. International situations may well arise to which U.S. policy-makers feel compelled to respond in some manner. It could be a crippling mistake to deprive our Government of the possibility of even a modest covert action response to unforeseen situations, leaving no possible alternative between a diplomatic protest and the commitment of our armed forces.

9. Limit the DCI to eight years in office. (Dellums)

Section 2 of the bill limits a Director of Central Intelligence (DCI) to no more than eight years in office, and provides that the offices of Director and Deputy Director of Central Intelligence (DDCI) may not be simultaneously occupied by individuals who have been in the employ of the Agency within five years prior to nomination. I do not oppose a statutory term of office, in the eight to ten-year range, for the Director. The Commission on CIA Activities within the United States recommended, in its June 1975 report, that the Director serve no more than ten years in office.

10. Provide that the positions of the Director and Deputy Director may not be simultaneously occupied by individuals who were employed by CIA during the five years prior to their appointment. (Dellums)

Section 102(a) of the 1947 Act now prohibits the simultaneous incumbency of the positions of Director and Deputy Director by commissioned officers of the armed services, reflecting the view that the Agency's foreign intelligence product must be independent of policy and departmental influence. Since the establishment of the Agency in 1947, the positions of Director and Deputy Director of Central Intelligence have never been simultaneously occupied by persons with prior Agency employment. One of the positions has always been held by a commissioned officer of the Armed Forces, with no prior Agency employment. (Former DDCI Lieutenant General Robert Cushman was detailed to the Agency in the early 1950's as a Marine Corp Lieutenant Colonel. He served as DDCI from May 1969 through December 1971.) However, because CIA does have specialized disciplines and distinctive management problems, I believe that the President and the Senate should have the opportunity to appoint and confirm those individuals who by training, dedication and experience may be best suited for the two top management positions in the intelligence community, regardless of past affiliation.

11. Require advance approval of the four oversight committees before assistance of any kind is provided to a Federal, state, or local governmental agency. (Dellums)

Proposed section 12 attempts to further limit CIA domestic activities, now restricted by the proviso in section 102(d)(3) of the National Security Act prohibiting police, subpoena, law-enforcement powers, or internal-security functions. Section 12 would preclude the Agency from (1) law enforcement, internal security, or police-type operations or activities in the United States; (2) providing assistance to any Federal, state, or local agency or employee engaged in police-type, law enforcement, or internal security functions or activities in the United States, without the advance approval of the CIA congressional oversight committees; or (3) participating in an illegal activity within the United States.

Although the Federal Bureau of Investigation has primary authority for counterintelligence, within the United States, a close working relationship between the FBI and CIA is essential for the overall success of this activity. Counterintelligence information collected overseas by CIA is routinely channeled to the FBI. This transfer of information would surely be considered "assistance of any kind," limited by proposed section 12(2). Thus, section 12(2) would severely restrict our nation's counterintelligence program. Moreover, I believe the requirement of prior approval of the oversight committees of the Congress before specific acts are taken would raise serious constitutional separation of powers questions.

12. Require the Agency to prepare special reports on foreign situations at the request of specified committees of Congress, and provide for the availability of these reports to all Members of Congress. (Findley)

Proposed section (g) of the National Security Act would require that the Agency fully and currently inform, and prepare special reports when requested by specified committees on information collected by CIA concerning "the relations of the United States to foreign countries and matters of national security, including full and current analysis by the Agency of such information." The bill specifies the Committee on Armed Services and International Relations of the House of Representatives and Armed Services and Foreign Relations of the Senate as recipients of this information.

The role of the Congress in the formulation of foreign policy requires that it obtain information on foreign developments. In response to this need, this Agency briefs a number of committees on foreign developments, using

the most sensitive information available. In 1978, for example, the following committees have received such briefings: the Armed Services and Appropriations Committees of both Houses, the International Relations, Agriculture, Merchant Marine and Fisheries, and Judiciary Committees of the House, the Foreign Relations and Judiciary Committees of the Senate, the Joint Economic Committee and Joint Committee on Atomic Energy. I believe this arrangement has been satisfactory from the standpoint of the Committees.

However, I am concerned that the proposed authority of congressional committees to task CIA to prepare special reports goes beyond sharing our intelligence, and would subject CIA to a degree of direction by several congressional committees. Congress established the Agency under the National Security Council, part of the Executive Office of the President, and made the Director of Central Intelligence the President's principal foreign intelligence advisor. I believe direction of the Agency must originate solely within the Executive Branch. To do otherwise would raise fundamental separation of powers questions. On a practical level, subjecting the Agency to a degree of direction by several congressional committees could lead to conflicts of priority and interest between our responsibilities to the President and National Security Council on the one hand, and the committees on the other, or indeed between the committees themselves.

I am also concerned that the language in H.R. 5873 that the Agency report "intelligence information collected by the Agency" could be interpreted to include raw reports. No committee could possibly assimilate, utilize, or evaluate all the Agency's raw intelligence reports; in addition, such a requirement would be extremely burdensome to the Agency. Most importantly, this requirement could jeopardize the identity of our intelligence sources and methods, as substantive intelligence often contains clues to its source. As you know, section 102(d)(3) of the National Security Act charges me with the responsibility to protect intelligence sources and methods from unauthorized disclosure.

13. Establish a criminal penalty for a violation of the prohibition on the Agency assuming police, subpoena, law-enforcement powers, or internal-security functions. (Findley)

Proposed section (i) would establish a criminal penalty for the willful violation of the existing prohibitions against the Agency assuming any police, subpoena, law-enforcement powers, or internal-security functions. As you know, Mr. Chairman, a few past Agency programs have involved certain domestic activities improper for this Agency. After a review of these activities by the Agency's Inspector General in May 1973, I ordered these programs terminated and issued specific directives to insure no such programs were undertaken in the future. Although some would argue that the past improprieties are evidence that criminal penalties are necessary to deter such activities in the future, I cannot agree. Clarification of ambiguities in the present law coupled with the awareness among CIA employees, the public, and Executive branch and congressional oversight mechanisms of the proper limits of CIA activity should be sufficient.

If, however, the Congress acts to add criminal penalties to the Act, the existing proscriptions against domestic activities must be rewritten in more specific terms. Otherwise, I believe the law is subject to due process constitutional objections, and might well be judged void for vagueness. I do not believe an employee of this Agency could pattern his behavior knowing, for example, that he must not undertake any "internal security functions."

14. Expressly subject Agency employees testifying before the Congress to existing United States Code provisions regarding perjury and witness' privileges. (Findley)

Proposed subsection (j) would stipulate that Agency employees who willfully mislead Congress, or who fail to respond fully and completely to a request of the Congress or a duly authorized committee acting under proposed subsection (g) shall be punishable under sections 192 - 194 of Title 2, United States Code, and section 1621 of Title 18, United States Code. Section 192 of Title 2 applies to "every person" summoned as a witness before Congress or summoned to produce papers upon any matter under inquiry before either House or any committee of either House, and establishes a criminal penalty for a default in appearing or the failure to answer a pertinent question. Section §1621 establishes a criminal penalty for the perjury of individuals who have taken an oath, where the law of the United States authorizes an oath to be administered. These laws apply to CIA personnel, making subsection (j) superfluous in that respect.

15. Add a statutory directive that the Agency collect intelligence. (Bennett)

Section (4) of H.R. 7781 proposes to add the word "collect" in section 102(d)(3) of the Act, so that this exposition of Agency duties would read:

> "(3) to collect, correlate, and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities (emphasis added)."

Section 102(d)(5) of the Act directs the Agency "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Pursuant to this provision of law, CIA has long been authorized to collect foreign intelligence. Nevertheless, collection of foreign intelligence is such a fundamental responsibility of this Agency that I believe it should be included among CIA's statutory duties, and I therefore support this amendment.

16. Require the Agency to notify American citizens when it is collecting intelligence from them within the United States or its possessions, except pursuant to published Executive Order. (Bennett)

Section (5) of the bill would add the following clause to section 102(d)(3) of the Act: "That except as specified by the President in a published Executive Order, in collecting foreign intelligence from United States citizens in the United States or its possessions, the Agency shall disclose to such citizens that such intelligence is being collected by the Agency." Agency employees who collect foreign positive intelligence from Americans in the United States do acknowledge to those providing the information that they are affiliated with CIA. Therefore, I have no objection to this section.

17. Shift the authority of the Director to protect intelligence sources and methods from unauthorized disclosure to the Central Intelligence Agency, and limit it within the United States to

(a) lawful means used to prevent disclosure by present or former employees, agents, sources, or persons or employees of persons or organizations who contract with the Agency or are affiliated with it; and

(b) provide guidance and technological assistance to other Federal departments and agencies performing intelligence functions. (Bennett)

H.R. 7781 would change the present responsibility to protect sources and methods in three important respects: by clarifying in statute the extent of the Director's authority, by altering the language of the basic charge, and by shifting the charge from the Director of Central Intelligence to the Central Intelligence Agency. I have no objection to the specific limitations on the Director's authority proposed in this bill. I believe one weakness in the present Act is the lack of guidelines it provides for the broad, vague, and demanding responsibilities it establishes. I believe more specific directives regarding the extent of Agency authority are advisable, and proposed section (6) of the Act would provide these guidelines for the Director's sources and methods responsibility.

I oppose the proposed change in language of this basic charge from "the Director shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" to a requirement that CIA be "responsible for protecting sources and methods of foreign intelligence from unauthorized disclosure." Because the existing statutory authority is vague, Federal courts have to some degree defined its scope. A change in the statutory language would likely erode the protection provided by decisions such as United States v. Marchetti 466 F.2d 1309 (4th Cir. 1972) and Heine v. Raus 261 F. Supp. 570 (D.C. Md. 1966).

Another fundamental reason for opposing this change is its shift of the sources and methods responsibility from the Director of Central Intelligence to the Central Intelligence Agency. As you know, the DCI has responsibilities beyond his position as head of the CIA. He serves as the nation'a senior foreign intelligence officer, tasked with improving the overall intelligence product and reviewing the activities of all intelligence agencies in order to make recommendations regarding the allocation of resources. Because of these intelligence community-wide responsibilities, the DCI is well placed to protect the entire community's sources and methods, while CIA is not well suited to protect the sources and methods of other agencies.